

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ESTEVAN CAMACHO,

Petitioner,

-v.-

9:03-CV-1246  
(LEK)(GJD)

JOSEPH T. SMITH, Superintendent, Shawungunk Corr. Facility,

Respondent.  
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APPEARANCES:

ESTEVAN CAMACHO  
Petitioner, *pro se*  
00-A-4647

GUSTAVE J. DIBIANCO, U.S. MAGISTRATE JUDGE

**ORDER**

Presently before this Court is a request from Petitioner Estevan Camacho ("Petitioner" or "Camacho") to stay his habeas Petition so that he may "exhaust new facts, and raise a claim that the evidence was insufficient for a conviction of both intentional and depraved indifference murder." Dkt. No. 14. Petitioner asks the Court to stay this action pending the outcome of *Guzman v. Greene*, 2006 WL 636972 (E.D.N.Y. 2006) which is presently pending before the Second Circuit Court of Appeals. *Id.*

Respondent opposes this Motion and asserts that the *Guzman* decision has no applicability to the instant Petition. Dkt. No. 15. Respondent points out that, although Camacho was indicted for both intentional murder and depraved indifference, he was

only convicted on the intentional murder charge.<sup>1</sup> However, the Petitioner in *Guzman* was convicted under depraved indifference statute. Further, the *Guzman* case addresses substantive issues relating the sufficiency of the evidence to sustain a conviction under the depraved indifference statute, not the intentional murder statute. Accordingly, Respondent argues that the outcome of *Guzman* has no bearing on this Petition.

The Court agrees that the *Guzman* case has no bearing on this instant Petition. Accordingly, Petitioner's Motion to Stay this action must be denied.

WHEREFORE, it is hereby

ORDERED, that the Petitioner's Motion to Stay (Dkt. No. 14) is **DENIED**, and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on the parties in accordance with the Local Rules.

DATED: November 17, 2006

  
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Hon. Gustave J. DiBianco  
U.S. Magistrate Judge

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<sup>1</sup>Petitioner was also convicted of first degree assault. See A-2 of Petitioner's Appellate Brief and Appendix filed before the Third Department.